



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: March 21, 2013

Number: **201324020**  
Release Date: 6/14/2013

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

UIL: 501.03-00

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz  
Director, Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: January 18, 2013

UIL: 501.03-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**Legend :**

**Date 1:**

**State :**

**Date 2:**

**Date 3:**

**A:**

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

**FACTS:**

Information presented discloses that you were incorporated on Date 1 under State nonprofit corporation law. Article 5 of your Certificate of Incorporation states, among other things, that you are organized exclusively for charitable, religious, educational and scientific purposes including, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3).

The Purpose clause of your Bylaws states that you were launched to create a single entity representing the common interest of the diverse community of rural mobile broadband providers and their suppliers. You further state that your purpose is to help Americans get the best of the best for rural areas, leading to a ubiquitous, safe, mobile, affordable and sustainable broadband service environment.

You represent that you are committed to providing a single, clear, and significant voice to government agencies that will be involved in choosing grant recipients from the recently enacted A. You state that you are committed to the vision of the Next Generation Wireless Network Grid

and that you will serve as a focal point for the discussion and advancement of technical and business issues of the rural mobile broadband industry in the United States. You further stated that you plan to serve as a catalyst for providing broadband services to underserved, rural communities and hope to expand your reach beyond State to other nations and perhaps worldwide. Through your members you plan to cooperate to obtain government grants, and then within the parameters of the government grants, develop and implement broadband services in the underserved areas.

On Date 2 we sent you letter requesting specific information regarding your activities including what qualifications a person must meet to become a member, what benefits members receive, what membership classifications you have, the amount of your membership dues, whether you have a website, whether you have pamphlets or brochures and what activities you have engaged in since your inception. You were also asked how your activities or services qualify you as an organization described in section 501(c)(3).

On Date 3 you responded to our letter listing the names of your current officers and directors and the cities in which they reside. Currently, you have 450 plus members consisting of persons belonging to high-tech internet industries, consumers and rural residents. You state that you plan to serve as a catalyst for providing broadband services to underserved, rural communities in the hopes to expand your reach nationwide and perhaps worldwide. You are not an internet provider but you and your members plan to obtain government grants to develop and implement broadband services in underserved areas. No timeline exists for network construction; and development depends on funding ability.

You state that membership in your organization is now free, but you seek out donations or sponsorships to support your activities at three levels. These three levels are Gold-\$1,000, Silver-\$500.00 and General-\$200.00. You represent that you recognize sponsors on your website in compliance with Internal Revenue Service qualified sponsorship rules. You state that sponsors are recognized on your website by name and logo.

You further state that members no longer receive services or benefits and the collaboration of members who work in the mobile broadband industry is necessary to bring broadband to rural areas of the country. In response to our letter of Date 1 in which we asked you to explain how you advertise your organization to the public in order for potential members to know about your services and activities, and to submit copies of your advertisements, you replied by stating that no advertisements have been made and you have conducted no activities nor provided any services pending completion of your tax-exemption application by the Internal Revenue Service.

You state that you have developed a website intended only to keep the founding members in contact with each other but have conducted no major activities or provided any services. With regard to your sources of financial support, you state that essentially your President and Secretary have donated funds to you to date.

**Law:**

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (the Regulations) provides that, in order for an organization to be exempt under section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more of the purposes specified in such section.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the Regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(2) of the Regulations in defining the term charitable provides the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: advancement of education.

Section 1.501(c)(3)-1(d)(3)(i) of the Regulations in defining the term educational provides, in general, the term "educational" as used in section 501(c)(3) relates to the instruction or training of the individual for the purpose of improving or developing his capabilities or, the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet this requirement, the organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business.

Rev. Rul. 69-528, 1969-2 C.B. 127, holds that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit even if that service were regularly provided to exempt organizations. Therefore, any organization recognized as exempt under section 501(c)(3) of the Code providing such services would be carrying on an unrelated trade or business.

Rev. Rul. 72-124, 1972-1 C.B. 145, holds that the aged are a charitable class and that an organization that operates to address the needs of the aged by providing for the "primary needs"

of such individuals for housing, health care, and financial security in conformity with the criteria specified in this Rev. Rul. is exempt under section 501(c)(c) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, holds that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3) of the Code. According to the Internal Revenue Service (the Service), providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services are provided at cost and solely for exempt organizations is not sufficient to qualify the activity as charitable within the meaning of section 501(c)(3) of the Code. Therefore, the Service held that the organization's activities were not charitable.

Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945) holds that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of statutorily exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 352-55, 360 (1978), the Tax Court determined that an organization formed to provide consulting services on the topic of rural-related policy and program development to tax-exempt organizations at, or close to cost, did not qualify for exemption under section 501(c)(3) of the Code as an educational, scientific, or charitable organization. In examining the organization's activities, the court noted that an organization may operate a trade or business and still qualify under section 501(c)(3) of the Code. "Rather, the critical inquiry is whether [the organization's] primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits for [the organization]." This determination "is a question of fact to be resolved on the basis of all the evidence presented by the administrative record." Factors to be considered include "the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits." Furthermore, "[c]ompetition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes." Applying this analysis, the court determined that the organization's services obviated the need for non-profits to employ full-time staff for that function, that the organization's fee was based on the cost of providing services rather than the tax-exempt organization's ability to pay, that the organization realized profit, that the organization's financing was not typical of section 501(c)(3) organizations, and that, in practice, the organization did not limit its services to section 501(c)(3) organizations. Therefore, the court concluded that the organization did not qualify for tax-exempt status under section 501(c)(3) of the Code because it served a substantial commercial purpose.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court determined that the American Campaign Academy, a training program for political campaign professionals, operated for the private benefit of the Republican party because its curriculum was tailored to Republican interests, its graduates worked for Republican candidates and incumbents, and it was financed by Republican sources. The Tax Court defined private benefit as "nonincidental benefits conferred on disinterested persons that serve private interests." Private benefits included "advantage; profit; fruit; privilege; gain; [or] interest."

### **Rationale:**

An organization seeking tax-exempt status under section 501(c)(3) of the Code must be organized and operated exclusively for one or more of the exempt purposes enumerated in section 501(c)(3) of the Code with no part of its net earnings inuring to the benefit of any private shareholder or individual. See also Section 1.501(c)(3)-1(a)(1) of the Regulations. Such organization also has the burden of establishing to the satisfaction of the Service that it qualifies for exemption under section 501(c)(3).

You state that you seeking tax-exempt status under section 501(c)(3) of the Code to further charitable, religious, educational and scientific purposes. You also represent that you were formed to create a single entity representing the common interest of the diverse community of rural mobile broadband providers and their suppliers. Additionally, you state that your purpose is to help Americans get the best of the best for rural areas, leading to a ubiquitous, safe, mobile, affordable and sustainable broadband service environment. Based on a review of your activities, you have failed to establish that you are described in Section 501(c)(3) of the Code as explained below:

### **1. Exempt Purposes**

An organization satisfies the operational test if it operates exclusively for one or more exempt purpose. An organization is "operated exclusively" for one or more exempt purpose only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. The presence of a single, substantial non-exempt purpose will destroy the exemption regardless of the number or importance of any truly exempt purposes. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945). You fail the operational test because you are not operated exclusively for one or more exempt purposes.

The term "charitable" is used in Section 501(c)(3) of the Code in its generally accepted legal sense and is not to be construed as limited by the separate enumeration in that section. See Section 1.501(c)(3)-1(d)(2). The term "charitable" includes the following: relief of the poor and distressed or of the underprivileged; advancement of education or science; lessening the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above. Additionally, a purported charitable activity must benefit a sufficiently large and indefinite class. The service has recognized charitable classes to include the poor, distressed and underprivileged, the aged, and the sick or handicapped.

While you state that you seek to get the best of the best in broadband services in rural areas throughout the country, you have failed to demonstrate how you will achieve this endeavor. You have not presented a business plan or proposals to show how you intend to achieve your purposes other than you are launched to create a single entity representing the common interest of the diverse community of rural mobile broadband providers and their suppliers. Despite several conversations with your legal representative and requests for detailed information explaining exactly how you intend to operate and achieve some exempt purpose, you have not established that you are organized and operated exclusively for one or more exempt purpose.

### **2. Private Benefit**

Information provided in your application shows that you serve substantial private interests in violation of section 501(c)(3) of the Code. An organization is not organized or operated exclusively for one or more exempt purpose unless it serves a public rather than private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as a designated individual, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Applicants must show that no more than an insubstantial part of its activities benefit private interests or any other nonexempt purpose.

When your application was initially filed you had various classes of members, high membership fees and some members received substantial benefits. You now represent that membership in your organization is free and that members no longer receive services or benefits. While you state that the collaboration of members who work in the mobile broadband industry is necessary to bring broadband to rural areas of the country, it appears that your activities are directed towards promoting the private business interests of your members working in the broadband industry. This is confirmed by your stated purpose which is to create a single entity representing the common interests of the diverse community of rural mobile broadband providers and their suppliers. Therefore, you are still operated for the private benefit of your officers, directors and members.

### **3. Substantial Commercial Purpose**

You are operated for a substantial commercial purpose because your primary activity, the operation of a broadband network, is generally, considered a trade or business ordinarily carried on for profit. An organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized and operated for the primary purpose of carrying out a unrelated trade or business. An "unrelated trade or business" is any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profit derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) of the Code.

In determining the existence, or nonexistence, of such primary purpose, all the facts and circumstances must be considered, including the size and extent of such trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. "{The} critical inquiry is whether petitioner's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits for {the} organization." B.S.W. Group, Inc. v. Comm'r, 70 T.C. 352, 357 (1978). Factors to be considered include "the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits." Competition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes.

For example, Rev. Rul. 69-528, 1969-1 C.B. 279, involves an organization that regularly carried on an investment service business. The organization was formed to provide investment services on a fee basis exclusively to exempt organizations. The Service determined that



providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Therefore, the organization did not qualify for exemption under section 501(c)(3) of the Code because it regularly carried on the business of providing investment services which would be an unrelated trade or business if carried on by any tax-exempt organization on whose behalf it operated. Furthermore, Rev. Rul. 72-369, 1972-2 C.B. 245, determined that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Providing services at cost and solely to exempt organizations is not sufficient to make the activity charitable. Finally, in B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1975), the Tax Court determined that an organization formed for the purpose of providing consulting services "primarily in the area of rural-related policy and program development" did not qualify for exemption under section 501(c)(3) of the Code because providing consulting services is a business "ordinarily carried on by commercial ventures organized for profit."

Like the organizations described in Rev. Rul. 69-528, Rev. Rul. 72-369, and B.S.W. Group, access to your broadband services ( if and when you begin to operate) will generally be provided for a fee. You state in your Bylaws that you were formed to create a single entity representing the common interests of the community of rural mobile broadband providers and their suppliers. While you state that you intend to expand mobile broadband services in rural areas throughout the country, your main focus seems to be developing the business interests of your members and suppliers and expanding mobile broadband services to rural areas is incidental to your overall business purposes.

Accordingly, your primary purpose is to engage in a nonexempt activity and therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS*

*and Power of Attorney.* All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE SE:T:EO:RA:T:3

1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations